EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (PERSONS REQUIRED TO PROVIDE INFORMATION) REGULATIONS 2013

2013 No. 1510

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations prescribe additional categories of persons who are required to provide information to persons who are authorised by the Secretary of State to investigate benefit offences under the Social Security Administration Act 1992 ("the Act"). http://www.legislation.gov.uk/ukpga/1992/5/contents/enacted

2.2 These Regulations are made under a new power inserted into section 109B of the Act by section 110 of the Welfare Reform Act 2012 ("the 2012 Act"), http://www.legislation.gov.uk/ukpga/2012/5/contents

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Act as originally enacted allowed persons acting on behalf of the Secretary of State to contact a specified list of persons (e.g. employers, banks, credit reference agencies etc.) to gather information for the purposes of the prevention and detection of Social Security benefit fraud. It gave them the legal power to compel these persons into providing the Secretary of State with the required information.

4.2 The 2012 Act introduced changes in welfare reform including the provision to tackle benefit fraud in all welfare areas e.g. Housing Benefit, Tax Credits and DWP benefits; the abolition of Council Tax Benefit; and the introduction of Universal Credit.

4.3 The changes introduced by the 2012 Act has an impact on the powers provided in the Act in so far that the DWP have not previously investigated Housing benefit, Tax Credits and Universal Credit and do not have a legal power to request evidence from providers involved in these sectors e.g. Childcare Providers, Landlords, Rent Officers and Local Authorities that administer a Local Council Tax Reduction Scheme. The regulations will

transfer these investigative powers to DWP (from HMRC and LAs) and also empower DWP to gather information to support their investigations.

5. Territorial Extent and Application

This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Exchequer loses *£1.1 billion* of social security benefits each year due to fraud committed by claimants.
http://statistics.dwp.gov.uk/asd/asd2/index.php?page=fraud_error

7.2 The strategy to tackle fraud and error and protect the integrity of the benefit system was announced by the Government on 18th October 2010 http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf.

7.3 One of the provisions critical in tackling fraud is that enabling the Department for Work and Pensions and local authority fraud investigators to require information from certain persons for the purposes of fraud prevention and detection, this power is found in section 109B of the Act.

7.4 The amendment to section 109B of the Act was primarily needed to take account of the wider coverage of Universal Credit, in particular its elements relating to childcare and housing costs. These Regulations therefore allow information to be obtained from providers of "relevant childcare" (as defined for the purpose of the Universal Credit Regulations 2013 (S.I.2013/376)). http://www.legislation.gov.uk/uksi/2013/376/contents/made This reflects current equivalent provisions enabling information to be obtained from childcare providers in relation to tax credit claims under section 19 of the Tax Credits Act 2002 (c.21).

7.5 They also allow information to be obtained from landlords and rent officers. This reflects current equivalent provision applying in relation to housing benefit claims in regulations 117 to 121 of the Housing Benefit Regulations 2006 (S.I.2006/213).
http://www.legislation.gov.uk/uksi/2006/213/contents/made

7.6 The 2012 Act also abolishes Council Tax Benefit. It is replaced by a locally administered payment, the Local Council Tax Reduction Scheme. These Regulations will also allow investigators - who currently can obtain information regarding Council Tax Benefit from Local Authorities – to obtain

information gathered by Local Authorities in administering the new scheme in so far as it is needed for the purposes of investigation into social security benefit fraud (of which Local Council Tax Reduction is not included).

7.7 Those who do not comply with this requirement may be prosecuted for obstruction.

Consolidation

7.8 These Regulations are free-standing.

8. Consultation outcome

8.1 These Regulations are in part related to changes made by the 2012 Act. Since then there has been no change to or any intention to amend the stated toughening and strengthening of fraud capabilities within the DWP.

8.2 The strategy announced by the Government on 18th October 2010, http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf to tackle fraud and error in the benefits and tax credits systems also stated that DWP would introduce tougher loss of benefit provisions. The strategy document invited comments; about ten comments were received on the matter increased fraud prevention and detection ability and those were asking for clarification.

8.3 The Government's policy intention to strengthen fraud capabilities in Social Security Benefits was also re-affirmed in the strategy refresh document published in February 2012.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62522/HMG-Fraud-and-Error-Report-Feb-2011-v35.pdf

8.4 The White paper 'Universal Credit Welfare that Works' http://webarchive.nationalarchives.gov.uk/+/http://dwp.gov.uk/docs/universal-credit-full-document.pdf was published by the Government on 11th November 2010.

8.5 These Regulations were considered by the Social Security Advisory Committee on 10th April 2013 and they decided not to refer them for broader consultation. They were also shared and discussed with the four Local Authority Associations. No policy concerns or issues were raised.

9. Guidance

9.1 Implementation of the provisions contained in these amendments will build on well established operational processes developed to support the existing regime which already requires information for fraud investigation purposes. Operational guidance will be available in preparation of the amendments going live in October 2013.

9.2 Information relating to these provisions will be included in for example relevant press releases, updates on www.gov.uk or through the DWP's website www.dwp.gov.uk

9.3 Information relating to the provisions will also be incorporated into leaflets and forms where appropriate.

9.4 DWP will draw on the expertise of interested outside stakeholders e.g. The Professional association for Childcare and Early Years; National Landlord Association, to ensure that guidance, communication products are suitably tailored to meet the needs of those specified as required to provide information.

9.5 DWP will support local authorities in taking forward the work to implement the provisions; this will include providing clear instruction and guidance.

10. Impact

10.1 This instrument has limited impact on business or civil society organisations. The regulation is intended as an enabler for the DWP to conduct its fraud investigations capability, which due to changes under welfare reform, now includes Tax Credits, Housing Benefit and Universal Credit. As investigation capability is being transferred from one area of Government (HMRC for Tax Credits and LAs for Housing Benefit investigations) to another (the DWP), enabled through the new regulation, business or civil society organisations would not expect to see increased impact simply as a result of the introduction of the regulation.

10.2 A new burdens assessment is has been completed that determined the impact on local authorities and other persons required to provide information. The outcome of the assessment has been approved by the Department for Communities and Local Government.

10.3 A full impact assessment has not been published for this instrument as the impact as been assessed as low cost. As such a Regulatory Triage Assessment was completed along with a supporting Validation Impact Assessment (VIA) both of which were approved by the Regulatory Policy Committee, the VIA being a published document.

11. Regulating small business

The legislation does apply to small businesses though there is not expected to be any increased burden as this is a transference of existing powers from one Government department to another.

12. Monitoring & review

The provisions will be monitored to ensure both the effectiveness of the measure and equality of treatment. The effect of this change will be evaluated as part of the overall fraud and error strategy.

13. Contact

Judith Hicks at the Department for Work and Pensions Tel: 020 7449 5311 or email: Judith.Hicks@dwp.gsi.gov.uk who can answer any queries regarding the instrument.